IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12685 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASANT CINEMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12685 of 2001
MR AJAY R MEHTA for Petitioner No. 1
MR SUDHIR MEHTA, AGP, for Respondent No. 1-2

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The petitioner, a cinema hall in the city of Navsari, has filed the present petition through its Manager, one Mr. Chaganbhai Patel. The petition challenges order dated 18.5.2000 passed by the State Government under the provisions of the Gujarat Entertainment Tax Act, 1977 (hereinafter referred to as 'the Act').

2. The brief facts necessary for the present are -

2.1 On 8.5.1998, the competent authority directed the petitioner to pay tax and penalty under the provisions of the Act totalling to Rs. 47,158/-. This order was made in pursuance of a surprise visit to the petitioner's premises on 25.10.1997, which led the tax authorities to discover certain irregularities.

2.2 The aforesaid order dated 8.5.1998 was taken up in suo motu revision and a show-cause notice dated 20.3.1999 was issued. After hearing the representative of the petitioner, on 28.1.2000 the impugned order has been passed on 18.5.2000 wherein the revisional authority has levied tax of Rs. 8,59,508/- under sec. 9(1) of the Act and penalty of Rs. 12,89,262/- under sec. 9(3) of the Act.

3. Mr. A.R. Mehta, learned advocate appearing on behalf of the petitioner, submitted that the impugned order made by the revisional authority suffers from the vice of non-application of mind and requires to be quashed. It was submitted by him that the petitioner had opted for payment of composite tax under sec. 6 of the Act on 10.4.1997, and thereafter the said application for composite tax had been modified on 30.5.1997, whereby the rate of tax payable had been reduced. The original rate was fixed at Rs. 25,156/- and the revised rate was fixed at Rs. 8,527/-. The submission was that the alleged discrepancies would not permit the respondent authorities to compute tax on the basis of the rate applicable per ticket as the petitioner had opted for composite tax. The next submission was to the effect that even in case of the difference of composite tax being applied, the revisional authority had committed an error when it adopted the basis for computing the same for 52 weeks because, according to the petitioner, the petitioner having opted for composite tax on 30.5.1997, the default, if any, could be computed only after the said date and the adoption of period of an entire year for computing

the tax payable was thus bad in law.

4. Mr. Sudhir Mehta, learned AGP, appearing on behalf of the respondents submitted that the petition deserved to be rejected as the petitioner was admittedly found to indulge in irregularities as was evident from the facts on record. It was further submitted that on 28.1.2000 when the petitioner appeared before the revisional authority, the petitioner had stated in writing that the petitioner would make payment of the sum of tax plus penalty to the extent of Rs. 47,158/- as per order dated 8.5.1998 within a period of one week and further that, if the petitioner failed to make such payment, it was open to the revisional authority to make an order as proposed in the show-cause notice. That admittedly the petitioner did not make payment within the time sought for and hence the impugned order was rightly passed as agreed by the petitioner.

5. In the order dated 8.5.1998 the competent authority has accepted the fact that the petitioner had opted for composite tax on the two dates mentioned hereinbefore and hence, according to the competent authority, the difference of Rs. 16,529/- of composite tax per week should be adopted as the basis for computing the tax which the petitioner was liable to pay as the tax which was evaded by virtue of the malpractices found during the surprise visit. Accordingly, applying the period of two weeks, the tax payable was worked out at Rs. 32,158/- and the penalty was levied at Rs. 15,000/instead of the maximum, which was one and half times the amount of tax. The petitioner was required to make payment of a total sum of Rs. 47,158/- within 30 days from the date of receipt of the said order.

6. On 20.3.1999, show-cause notice was issued by the revisional authority wherein it was stated that the assessment framed by the competent authority was far less in comparison with the tax evaded and hence the petitioner was called upon to show cause as to why the tax evaded should not be computed for the entire period of 52 weeks and penalty be levied at the maximum rate on such sum of tax.

7. After seeking eight adjournments, the petitioner appeared before the revisional authority on 28.1.2000 and stated in writing that the amount payable as per order dated 8.5.1998 would be paid within a period of one week therefrom and a copy of the challan shall be presented before the respondent authorities by 5.2.2000. It was further stated that in case the petitioner failed to make

such payment, the petitioner would accept an order revising the assessment in terms of the show-cause notice.

8. It appears that on 12.6.2000, the petitioner's licence was suspended for non-payment of entertainment tax dues and the said order came to be challenged by way of Special Civil Application No. 8086 of 2000. The said petition came to be finally disposed of on 24.7.2000 whereby this court granted certain installments for making the necessary payments. These facts are being narrated only for the limited purpose that payment of Rs. 47,158/-, which had not been paid till that point of time, was made in pursuance of the aforesaid order dated 24.7.2000 passed by this court.

9. Having heard both the sides, we feel that the petition requires to be allowed for the following reasons:

10. The respondent authorities do not dispute the position that the petitioner is liable to tax under sec. 6 of the Act i.e. composite tax. The only default committed by the petitioner is that it has sold tickets at the rate as per option exercised in April 1997 instead of May 1997. In other words, though a lower rate per ticket was claimed as basis for composite tax, the petitioner was found during surprise visit to have sold tickets at higher rate. Hence, the period of 52 weeks could not have been adopted in the impugned order because admittedly composite tax basis was claimed only with effect from 11.4.1997.

11. The impugned order dated 18th May 2000 is quashed and set aside and the matter is restored to the file of the revisional authority with the following directions :

11.1 The revisional authority shall compute the period of default from 30.5.1997 till the date of the surprise visit, i.e., 25.10.1997, and compute the tax on the difference of rate of the composite tax between 10.4.1997 and 30.5.1997. This would be, thus, for a period of 5 months comprised of June to October 1997.

11.2 On the amount computed, as aforesaid, interest will be levied at the percentage statutorily provided under sec. 10 of the Act. The interest shall be computed on the amount of Rs. 47,158/- from the end of period of 30 days commencing from the date of the receipt of the order dated 8.5.1998. In relation to other amount, after deducting the sum of Rs. 47,158/-,

interest shall be computed for the appropriate period after giving credit for a deposited sum of Rs. 2,25,000/- during pendency of this petition.

11.3 It will be open to the revisional authority to decide, after hearing the petitioner, if any penalty is leviable, at what rate the same should be levied.

12. The impugned order dated 18.5.2000 is, therefore, quashed and set aside. The petition is allowed in the aforesaid terms. Rule is made absolute. There shall be no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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